

## Rye City Planning Commission Minutes

February 24, 2004

**PRESENT:**

Martha Monserrate  
H. Gerry Seitz  
Hugh Greechan  
Nick Everett  
Peter Larr  
Patrick McGunagle

**ABSENT:**

Barbara Cummings

**ALSO PRESENT:**

Christian K. Miller, AICP, City Planner

Martha Monserrate noted the absence of Chair Cummings and indicated that she would be acting as chair for the meeting.

**1. Rye Subaru**

The Planning Commission discussed the draft resolution of approval and the condition regarding the loading and unloading of multi-car-carrier vehicles associated with the project site. The Planning Commission discussed whether the proposed condition of approval should be revised to more explicitly state the process by which the applicant would be entitled to appeal the City's determination that the loading and unloading of multi-car-carrier vehicles associated with the project site would be considered unsafe. Other members of the Commission noted that the condition should be limited to stating that the multi-car-carrier vehicle loading and unloading associated with the project site shall not result in unsafe or hazardous conditions to vehicle flow on area roadways or the parking of vehicles in the adjacent Metro-North parking lot. The City Planner noted that including an appeals process in the resolution would be potentially cumbersome and conflict with other existing laws regarding the enforcement of conditions in site plan resolutions. Some Planning Commission members also noted that safety issues regarding traffic vehicle flow would be more likely enforced by the City's Police Department. The Commission agreed that the existing laws and process governing enforcement of vehicle flow on area roadways and the conditions of resolutions would be adequate.

The City Planner added that a condition citing an appeals process in the Planning Commission's resolution might complicate the existing enforcement of rules or laws governing vehicle and traffic flow. The proposed condition in the resolution would essentially supplement existing enforcement measures.

The Planning Commission discussed the condition regarding unsafe or hazardous conditions noting that the language "on a regular basis" should be removed. Anthony Gioffre (applicant's attorney) objected noting that the applicant should not be held

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1 responsible for conditions that occur on a one time or infrequent basis. The Planning  
2 Commission responded that as a practical matter the City does not enforce conditions  
3 of approval based on few infractions but rather that on a regular basis.

4  
5 On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the  
6 following vote:

7  
8 AYES: Hugh Greechan, Martha Monserrate, Patrick McGunagle, Nick Everett,  
9 Peter Larr

10 NAYS: None

11 ABSTAIN: H. Gerry Seitz

12 ABSENT: Barbara Cummings

13  
14 the Planning Commission took the following action:

15  
16 **ACTION:** The Planning Commission conditionally approved final site plan  
17 application number SP276.

### 18 19 **2. United Towing and Recovery, Inc.**

20  
21 The City Planner confirmed with the applicant that it was unwilling to modify its  
22 proposed site plan to comply with the Planning Commission's interpretation that the  
23 City's Official Map prohibits the placement of structures, including fences and other site  
24 features, within the designated right-of-way of Nursery Lane. Frank Allegretti  
25 (applicant's attorney) responded that his client will not modify the project to comply with  
26 the Planning Commission's request.

27  
28 The City Planner confirmed with Mr. Allegretti at the Commission's February 10<sup>th</sup>  
29 meeting that Mr. Allegretti requested a resolution denying his application. Mr. Allegretti  
30 confirmed that request.

31  
32 The City Planner noted that based on Mr. Allegretti's response the Planning  
33 Commission was considering a resolution of denial. Mr. Allegretti responded that it was  
34 his understanding based on the comments of the City Planner at the February 10  
35 meeting that no decision could be made until the Commission held a public hearing.  
36 The City Planner responded that based on consultation with Corporation Counsel it did  
37 not appear that the Commission could conduct a public hearing given that the  
38 application did not comply with the City's Official Map. The Commission added that the  
39 resolution of denial that it was considering was drafted in accordance with the  
40 recommendations of Corporation Counsel.

41  
42 Mr. Allegretti noted that he wanted the opportunity for a public hearing so that he can  
43 build the record for his client's position regarding the application and the encroachment  
44 into the right-of-way. He requested that the Planning Commission conduct a public  
45 hearing or hold an additional meeting so that he has the opportunity to enhance his

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client's record and submit additional information. The Planning Commission responded that they were advised by Corporation Counsel that it could not hold a public hearing given that the application does not comply with the City's Official Map. The Commission also noted that the public hearing is not only for the benefit of the applicant but also the neighbors and the City, which might also want the opportunity to expand the public record. Mr. Allegretti objected to the Planning Commission not holding the public hearing or being given the opportunity to submit more information regarding his applicant's proposal.

On a motion made by Peter Larr, seconded by Patrick McGunagle and carried by the following vote:

AYES: Hugh Greechan, H. Gerry Seitz, Martha Monserrate, Nick Everett, Peter Larr, Patrick McGunagle

NAYS: None

RECUSED: None

ABSENT: Barbara Cummings

the Planning Commission took the following action:

**ACTION:** The Planning Commission denied Site Plan and Use Permitted Subject to Additional Standards and Requirements application number SP278.

### 3. Hancock Residence

The Planning Commission reviewed the comments of the Board of Architectural Review, noting that they had no objection to the application.

On a motion made by Peter Larr, seconded by Hugh Greechan and carried by the following vote:

AYES: Hugh Greechan, H. Gerry Seitz, Martha Monserrate, Patrick McGunagle, Nick Everett, Peter Larr

NAYS: None

RECUSED: None

ABSENT: Barbara Cummings

the Planning Commission took the following action:

**ACTION:** The Planning Commission set a public hearing on wetland permit application number WP148 for its next meeting on March 9, 2004.

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### **4. McGuire Residence**

Richard Horsman (applicant's landscape architect) provided an overview of the application noting that it involves construction of a rear building addition to a property located at 9 Mayfield Road. Mr. Horsman noted that the entire property is located within the 100-foot wetland buffer of the adjacent Blind Brook.

Mr. Horsman noted that the landscape mitigation plan proposes plantings on the adjacent property owned by the City of Rye. Mr. Horsman stated that the applicant could provide the required 2:1 landscape plantings on its property but that the mitigation would be more effective if it was located off-site closer to the existing wetlands. The Planning Commission noted significant policy issues with permitting off-site mitigation. The Commission stated that off-site mitigation should not be permitted where the applicant cannot satisfy their on-site mitigation requirements. The Commission also noted that it would have to consider the appropriate use of City land for such purposes and that a license agreement from the Rye City Council would likely be required. The Planning Commission also added that off-site mitigation should only be permitted where there is deemed to be an overwhelming public benefit.

Mr. McGuire (property owner) noted that the area located off his property has been managed lawn since prior to his purchase of the property. Mr. McGuire stated that the landscape mitigation plan is intended to convert this lawn area to more appropriate wetland plantings. Mr. McGuire stated that the proposed plan would also rehabilitate an area that was disturbed by the City in connection with the removal of trees on the adjacent City-owned property. The intent of the applicant's landscape plan is to remediate this disturbed area.

Richard Horsman added that the proposed plan would provide 6.5 square feet of landscape plantings for every one square foot of impervious area associated with the proposed addition. Mr. Horsman noted that much of the plantings would consist of a wetland seed mix located in the area that was disturbed by the City's tree removal activities. The Planning Commission responded that it would consider the applicant's proposal but that it wanted to conduct a site walk of the property. The Planning Commission recommended that the plan be revised to include appropriate plantings in the side yard adjacent to the wetland. The side yard property line should also be defined with either a fence or some other appropriate demarcation.

### **5. Fabricant Residence**

Allan Pilch (applicant's landscape architect) provided an overview of the application noting that it involved the addition to the rear of an existing residence located at 17 John Jay Place. Mr. Pilch responded to the Planning Commission's concerns regarding the size of the addition and the percent increase of impervious area within a designated wetland buffer. Mr. Pilch noted that opportunities were available on the side and front of the residence but they were not practical in meeting the applicant's need. Mr. Pilch

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1 noted that the applicant was expanding a master bedroom and kitchen both of which  
2 are located towards the rear of the existing residence. Mr. Pilch noted that the proposed  
3 addition is relatively modest and that it is not a full redevelopment of the property which  
4 limits flexibility in terms of reducing impacts to wetland buffers and meeting the  
5 applicant's reasonable need to expand its residence.

6  
7 Mr. Fabricant (property owner) noted that the existing residence was relatively modest  
8 in size and that the proposed addition was reasonable. He noted that the addition was  
9 being provided in part to serve the needs of his parents who are in their late 80's. Mr.  
10 Fabricant stated that he had received an earlier determination from the City in 2001  
11 noting that there were no wetlands on or near the subject property. Based on that  
12 determination, Mr. Fabricant stated that he spent \$45,000 on architectural fees to  
13 design the proposed addition. He noted that the addition was approved by the Zoning  
14 Board of Appeals and Board of Architectural Review but that he discovered, prior to  
15 obtaining a building permit, that his architect had made errors regarding the calculation  
16 of floor area for the proposed residence. Mr. Fabricant stated that those errors required  
17 him to return to the Board of Architectural Review to revise his plans to reduce the  
18 amount of proposed square footage on the second floor of the proposed addition. Mr.  
19 Fabricant noted that upon returning to the Board of Architectural Review there was a  
20 second determination by the City Naturalist this time noting that the project may require  
21 a wetland permit. Mr. Fabricant noted frustration with the process and considerable  
22 amount of money required to prepare plans to meet the City's requirements.

23  
24 The Planning Commission noted that the proposed addition would increase the amount  
25 of impervious area within the wetland buffer by 140% or approximately 1,100 square  
26 feet. The Planning Commission noted that it seeks to avoid such increases where  
27 practical. Mr. Pilch responded that the applicant has prepared a mitigation plan that  
28 provides two square feet of landscape plantings for every one square foot of increased  
29 impervious area. Mr. Pilch noted that the mitigation plan would convert existing lawn  
30 areas to include wetland plantings. Mr. Pilch added that the existing wetland is located  
31 off-site and that it is elevated above the applicant's property.

32  
33 Mr. Fabricant noted that he would construct the proposed patio area using wood and  
34 crushed stone to provide a porous paving material rather than the proposed blue stone.  
35 The Planning Commission encouraged Mr. Fabricant to make such a modification to  
36 reduce the extent of impervious area within the buffer.

37  
38 The Planning Commission noted a variety of inconsistencies and errors in the  
39 applicant's application form and requested that it be revised. Mr. Pilch responded that  
40 the requested revisions would be made.

41  
42 The Planning Commission questioned the City Planner as to whether a referral to  
43 Westchester County was necessary. The City Planner responded that no such referral  
44 is required pursuant to the requirements of the General Municipal Law or Westchester

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1 County Administrative Code but that the County would be notified of the application  
2 pursuant to the City's wetland law because they are an abutting neighbor.

3

### **4 6. Minutes**

5

6 The Commission reviewed and approved the minutes of its February 10, 2004 meeting.